



Archaeological Resources Protection Act

BACKGROUND: In 1906, Congress enacted the Antiquities Act to deal with looting and vandalism of archaeological sites on public lands. The Act established a criminal penalty of a \$500 fine and/or imprisonment for 90 days. Based on conditions in 1906, when large numbers of archaeological sites had not been affected and high quality artifacts sold for only a few dollars apiece, this penalty was considered sufficient. The problem worsened over time until, by the 1970's, individual artifacts were selling for thousands of dollars and many archaeological sites on public lands were being damaged or destroyed by looting and vandalism. (In a study conducted for Congress in 1987, the GAO found that looting and vandalism had caused damage to 32 percent of the known sites on National Park Service, Forest Service, and Bureau of Land Management lands in the Four Corners states.) The penalties of the 1906 Act clearly were no longer commensurate with the severity of the problem. In 1974, the Antiquities Act was declared unconstitutionally vague by the Ninth Circuit Court of Appeals and a subsequent attempt to prosecute violators under other Federal statutes was unsuccessful. Congress responded to this situation by enacting the Archaeological Resources Protection Act of 1979 (ARPA). ARPA, as amended in 1988, significantly strengthens the penalties for looting and vandalizing archaeological sites on public and Indian lands and places important protection and management responsibilities on Federal agencies.

STATUTE: Archaeological Resources Protection Act as amended.

REGULATIONS: 43 CFR Part 7, Protection of Archaeological Resources and 43 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections.

- REFERENCES:**
1. U.S. Department of Energy, Office of Environmental Guidance, *DOE 5400.1, General Environmental Protection Program*.
 2. U.S. Department of Energy, Office of Environmental Guidance memorandum, "Management of Cultural Resources at Department of Energy Facilities," February 1990.
 3. U.S. Department of Energy, Office of Environmental Guidance, *The Environmental Guidance Program Reference Book: National Historic Preservation Act and Related Legislation*, ORNL/M-1178, Oak Ridge National Laboratory, Oak Ridge, Tennessee.
 4. U. S. Department of the Interior, National Park Service, *Archaeological Resource Protection*, Preservation Press, Washington, D.C., 1992.
 5. U.S. Department of the Interior, National Park Service, Technical Brief No. 11, "Legal Background of Archaeological Resources Protection," June 1991.

Protection and management of archaeological resources on Federal and Indian lands

ARPA contains improved protection measures for archaeological resources on Federal and Indian lands including provisions for felony level penalties for those convicted of serious violations, as well as civil penalties and forfeiture of vehicles and equipment. ARPA also establishes new procedures for Federal land managers to issue permits for authorized excavation and removal of archaeological resources. Uniform regulations (Protection of Archaeological Resources, 43 CFR Part 7) implementing provisions of ARPA have been developed. These regulations establish uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States.

Definitions

Definitions of important terms used in ARPA are provided in **Section 3** of the Act. *Archaeological resources* is a particularly important term for the implementation of this act. “Archaeological resource” means any material remains of past human life that are at least 100 years of age and include, but not limited to: pottery, basketry, bottles, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Other terms defined in the statute and regulations are:

- ☐ *Federal land manager,*
- ☐ *public lands,*
- ☐ *Indian lands,*
- ☐ *Indian tribe,*

- ☐ *person,*
- ☐ *State,*
- ☐ *archaeological interest,*
- ☐ *material remains,* and
- ☐ *arrowhead.*

Federal agencies must comply with ARPA

All Federal agencies must comply with ARPA. The protection of archaeological resources that remain in or on these lands must be ensured and the confidentiality and characteristics maintained.

Permits may be issued to authorize excavation and removal of archaeological resources from Federal lands

Section 4 of ARPA establishes a permitting system through which Federal agencies can authorize professional scientific excavation and removal of archaeological resources from their lands. Permits for these activities still can be issued under the Antiquities Act of 1906, but ARPA is now the standard Federal archaeological permitting authority. Important provisions of this Section deal with application for permits, the requirements to be met for permit issuance, consultation with Indian tribes regarding permits, and suspension and revocation of permits. Additional direction on permitting is provided in the uniform regulations (43 CFR Part 7, Sections 5-12).

Archaeological resources removed from Federal lands are the property of the United States and their custody is regulated

Section 5 of ARPA gives the Secretary of the Interior the authority to promulgate

regulations controlling the disposition of all archaeological resources removed from Federal land pursuant to the Act and other applicable statutes. **Section 13** of the uniform regulations states that, “Archaeological resources excavated or removed from the public lands remain the property of the United States.” Procedures for curation of Federally-owned and administered collections of archaeological resources are established in 36 CFR Part 79. Native American human remains and cultural items held by Federal agencies are subject to repatriation under the Native American Graves Protection and Repatriation Act.

Unauthorized acts are prohibited and subject to criminal penalties

In the absence of an appropriate **Section 4** permit or exemption, **Section 6** of ARPA prohibits excavating, removing, damaging, or otherwise altering or defacing archaeological resources on Federal or Indian lands or attempting to commit such acts. Also prohibited is trafficking of archaeological resources removed illegally from Federal or Indian lands or those taken in violation of state or local law when they are moved in interstate or foreign commerce. Except in the case of removal of arrowheads from the surface of the ground, which is exempted, the penalties for knowingly violating or counseling, procuring, soliciting, or employing any other person to violate any of ARPA’s prohibitions are:

- ❑ a fine of not more than \$10,000 or imprisonment for not more than one year, or both, when the commercial or archaeological value and the cost of restoration and repair of the resources involved are \$500 or less (misdemeanor),

- ❑ a fine of not more than \$20,000 or imprisonment for two years or both, when these values exceed \$500 (felony),
- ❑ a fine of not more than \$100,000 or imprisonment for five years or both, in the case of a second or subsequent such violation (felony).

(The Omnibus Crime Control Act of 1984 uniformly increased the maximum fines for all violations of Federal law to \$100,000 for misdemeanors and \$250,000 for felonies.)

Procedures for determination of archaeological or commercial value and cost of restoration and repair are established in **Section 14** of the uniform regulations.

Unauthorized acts are also subject to civil penalties

Except in the case of removal of arrowheads from the surface of the ground, which also is exempted, **Section 7** of ARPA and **Sections 15** and **16** of the uniform regulations allow violators of the Act to be assessed civil penalties of:

- ❑ the full cost of restoration and repair plus the archaeological or commercial value for the first violation, and
- ❑ double the cost of restoration and repair plus double the archaeological value or commercial value for a second or subsequent violation.

The Federal agency involved assesses the civil penalty. The violator may pay the amount assessed or request a hearing for judicial review of the penalty. **Section 7** of ARPA and **Sections 15, 16,** and **37** of the uniform regulations establish the administrative procedures for assessing civil penalties and penalty hearings. (**Section 8** of ARPA states that civil penalties for violations on Indian lands are payable to the Indian or Indian tribe involved.)

Rewards may be paid for information leading to convictions

Section 8 of ARPA authorizes the payment of a reward of one half the fine or penalty, but not to exceed \$500, to any person or persons providing information leading to a criminal conviction or the finding of a civil violation of the Act. Upon certification from the Federal agency, the reward is paid by the Secretary of the Treasury from the fines or penalties collected.

Archaeological resources, vehicles, and equipment involved in violations are subject to forfeiture

Subject to forfeiture under *Section 8* of ARPA are all archaeological resources and all vehicles and equipment involved in a violation of the Act. These items may be forfeited upon conviction for a criminal violation, assessment of a civil penalty, or the determination by a court that the archaeological resources, vehicles, or equipment were involved in a violation. Forfeitures are to the United States for violations on Federal lands or to the Indian tribe involved for those on Indian lands.

Federal agencies must maintain the confidentiality of archaeological resource information

Section 9 of ARPA states that information on the nature and location of archaeological resources on Federal and Indian lands will not be made available to the public when this disclosure will create a potential for harm to the resources. It also specifically exempts information on archaeological resources from Freedom of Information Act (FOIA) requests.

Federal agencies are assigned additional responsibilities for archaeological protection and management

Section 10 of ARPA requires each Federal agency to:

- ☐ promulgate agency regulations for implementation of the Act (consistent with the uniform regulations, 43 CFR Part 7), as may be appropriate for the carrying out of functions and authorities under this Act,
- ☐ establish a public awareness program on the significance of a need to protect archaeological resources, and
- ☐ submit an annual report to Congress on the public awareness program.

Also, under *Section 14* each Federal agency is required to:

- ☐ develop plans for archaeological resources surveys of all lands under the control of the agency,
- ☐ schedule surveys of lands likely to contain scientifically valuable archaeological resources,
- ☐ develop an agency reporting system for suspected violations of the Act.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-232 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Lois Thompson, Federal Preservation Officer, Office of Environmental Policy and Assistance, Department of Energy, EH-412, 1000 Independence Ave., S.W., Washington, D.C. 20585, telephone (202) 586-9581.